

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

CONSERVATION LAW FOUNDATION

*Plaintiff,*

v.

WILLIAM BARR, *et al.*

*Defendants.*

Civil Action No. 1:20-cv-11827

**JOINT MOTION TO ESTABLISH BRIEFING SCHEDULE**

Plaintiff Conservation Law Foundation and Defendants William Barr, *et al.* respectfully move this Court for an order establishing a schedule for further proceedings in this matter. In support of this motion, the parties state the following:

1. This case is an Administrative Procedure Act challenge to a Department of Justice memorandum prohibiting the Department from settling certain civil enforcement actions through “Supplemental Environmental Projects,” or “SEPs.” Plaintiff contends that the memorandum depends on a faulty interpretation of the Miscellaneous Receipts Act.

2. Plaintiff served its complaint on the United States Attorney on October 13, 2020. Pursuant to Federal Rules 12(a)(2) and 12(b), Defendants’ response was due on December 14, 2020.

3. Defendants moved to dismiss Plaintiff’s complaint on Tuesday, November 24, 2020. Pursuant to Local Rule 7.1, Plaintiff’s opposition would ordinarily be due on December 8, 2020.

4. In response to Defendants' motion, Plaintiff plans to amend its Complaint as a matter of course under Federal Rule 15(a)(1)(B). The amended complaint will add a new Plaintiff and new allegations responding to Defendants' motion, including new standing allegations.<sup>1</sup> Pursuant to Rule 15, Plaintiff must file this amendment by December 15, 2020, a week after Plaintiff's opposition to Defendants' motion to dismiss is due.

5. Plaintiff's amended complaint will supersede its earlier pleadings and, likewise, may supersede portions of Defendants' motion. For that reason, proceeding with briefing on Defendants' pending motion would be inefficient, and the schedule requested herein would vacate the current deadline for Plaintiff to respond to Defendants' motion.

6. Under Federal Rule 15(a)(3), Defendants' answer or motion to dismiss Plaintiff's amended complaint will be due on December 29, 2020. That deadline—and any subsequent briefing—will fall over the December and January holidays.

7. Given the holiday season and constraints imposed by the COVID-19 pandemic, maintaining the default deadlines under the Local and Federal Rules would be prejudicial to all parties. Plaintiffs' counsel will be unavailable in whole or in part throughout late December and early January. Mr. Martinez is now on paternity leave and will not return until January 4, 2021. Ms. Thurston will be without normal childcare for her three children for several days in mid-December and from December 23, 2020 until January 4, 2021, and the ongoing pandemic makes obtaining temporary substitute childcare risky. And, pending developments in the pandemic, Mr. Annatoyn anticipates he will be unavailable for several days to celebrate Christmas, including significant travel by car.

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<sup>1</sup> In so amending, Plaintiff does not suggest or concede that its original complaint warrants dismissal under Federal Rule 12(b)(1).

8. Counsel also faces several competing deadlines during this period. Most notably, Mr. Annatoyn is sole counsel to the Union of Concerned Scientists in its challenge to less stringent federal fuel economy and greenhouse gas emission standards for light duty vehicles. *See Competitive Enterprise Institute, et al. v. National Highway Traffic Safety Administration, et al.*, No. 20-1145 (D.C. Cir.). Petitioners' opening briefing in that matter, totaling nearly 37,000 words, is due on January 14, 2020.

9. Accordingly, the parties propose the following schedule in this matter:

**December 15, 2020:** Plaintiffs file their amended complaint

**January 8, 2021:** Defendants file their motion to dismiss or answer.

**January 25, 2021:** Plaintiffs file their opposition (if necessary).

**February 4, 2021:** Defendants file their reply (if necessary, and subject to leave from the Court).

10. This schedule accommodates counsel for Plaintiff's holiday and family-related demands and likewise provides Defendants ample time over the holidays to prepare a renewed motion to dismiss or answer to Plaintiffs' amended complaint.

Wherefore, the parties respectfully move the Court to enter the above briefing schedule and to vacate the December 8, 2020 deadline for Plaintiff to respond to Defendants' motion to dismiss.

Dated: December 2, 2020

Respectfully submitted,

/s/ Travis Annatoyn

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**CERTIFICATE OF SERVICE**

I certify that this document was filed through the Court's ECF system, which will cause copies to be sent to all counsel of record.

Dated: December 2, 2020

/s/ Travis Annatoyn  
TRAVIS ANNATOYN